

110TH CONGRESS
1ST SESSION

S. CON. RES.

Expressing the sense of Congress that the President should not initiate military action against Iran without first obtaining authorization from Congress.

IN THE SENATE OF THE UNITED STATES

Mr. SANDERS submitted the following concurrent resolution; which was referred to the Committee on

CONCURRENT RESOLUTION

Expressing the sense of Congress that the President should not initiate military action against Iran without first obtaining authorization from Congress.

Whereas article I, section 8 of the United States Constitution grants Congress the power to “declare war”, to “lay and collect taxes”, to “provide for the common defence and general welfare of the United States”, to “raise and support armies”, to “provide and maintain a navy”, to “make rules for the government and regulation of the land and naval forces”, to “provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions”, to “provide for organizing, arming, and disciplining, the militia”, and to “make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers

vested by this Constitution in the Government of the United States, or in any department or officer thereof”;

Whereas the Constitution also grants Congress exclusive power over the purse, stating, “No money shall be drawn from the Treasury, but in consequence of appropriations made by law”;

Whereas the sole war power granted to the executive branch through the President can be found in article II, section 2, which states, “The President shall be the Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States”;

Whereas President George W. Bush and his Administration have argued that this “Commander in Chief” clause grants the President wide latitude to engage United States military forces abroad without prior authorization from Congress;

Whereas the President further argues that previous unilateral actions by Presidents of both political parties add credence to this interpretation of the Constitution;

Whereas, in reality, nothing in the history of the “Commander in Chief” clause suggests that the authors of the provision intended it to grant the executive branch the authority to engage United States forces in military action without any prior authorization from Congress, except to allow the President to repel sudden attacks and immediate threats;

Whereas in the Federalist Paper Number 69, while comparing the lesser war-making power of the President of the United States with the war-making power of the King of Great Britain, Alexander Hamilton wrote, “The Presi-

dent is to be commander in chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the confederacy; while that of the British king extends to the *declaring* of war, and to the *raising* and *regulating* of fleets and armies; all which, by the constitution under consideration, would appertain to the legislature.”;

Whereas James Madison declared that it is necessary to adhere to the “fundamental doctrine of the Constitution that the power to declare war is fully and exclusively vested in the legislature”;

Whereas, in 1793, President George Washington, when considering how to protect inhabitants of the frontier of the United States, instructed his Administration that “no offensive expedition of importance can be undertaken until after [Congress] have deliberated upon the subject, and authorized such a measure”;

Whereas, in 1801, when Thomas Jefferson sent a small squadron of frigates to the Mediterranean to protect against possible attacks by the Barbary powers, he told Congress that he was “unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense”, and further noted that it was up to Congress to authorize “measures of offense also”;

Whereas, according to the most definitive United States intelligence report, Iran is several years away from developing a nuclear weapon, and even the most pessimistic analysis by outside experts predicts that Iran is at least 3 years

away from developing a nuclear weapon, assuming Iran suffers no setbacks during development, which would be unprecedented;

Whereas diplomatic efforts involving Iran, the United States, the European Union, Russia, the People's Republic of China, the International Atomic Energy Agency, and the United Nations Security Council continue; and

Whereas, despite these diplomatic efforts and statements by President Bush and other members of his Administration that diplomacy is the preferred route, there are an increasing number of reports that preparations for war are underway: Now, therefore, be it

1 *Resolved by the Senate (the House of Representatives*
2 *concurring), That Congress—*

3 (1) strongly affirms that initiating military ac-
4 tion against Iran without congressional approval
5 does not fall within the President's "Commander in
6 Chief" powers under the Constitution;

7 (2) rejects any suggestion that the Authoriza-
8 tion for Use of Military Force (Public Law 107-40;
9 50 U.S.C. 1541 note), approved in response to the
10 terrorist attacks of September 11, 2001, explicitly or
11 implicitly extends to authorizing military action
12 against Iran, including over its nuclear program;

13 (3) rejects any suggestion that the Authoriza-
14 tion for Use of Military Force Against Iraq Resolu-
15 tion of 2002 (Public Law 107-243; 50 U.S.C. 1541
16 note) explicitly or implicitly extends to authorizing

1 military action against Iran, including over its nu-
2 clear program; and

3 (4) strongly and unequivocally affirms that
4 seeking congressional authority prior to taking mili-
5 tary action against Iran is not discretionary, but is
6 a legal and constitutional requirement.